

Internal Revenue Service
memorandum

date: JAN 18 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-975-90
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated June 26, 1990, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the following:

[REDACTED]

[REDACTED]

[REDACTED]

The information submitted states that On [REDACTED]
[REDACTED] transferred all of its stock to the [REDACTED]
[REDACTED] formerly named [REDACTED]
[REDACTED]. The information further states that, at
the time of the transfer, [REDACTED] had no employees and that it
was not dissolved but rather became a subsidiary of [REDACTED]
[REDACTED].

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Director, Internal Revenue Service Center

We have reviewed the opinion of the Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is merely a real estate holding company and it does not perform any service in connection with the transportation of passengers or property by railroad. Accordingly, the company ceased to be an employer under the Acts on [REDACTED], the on which its stock was transferred to [REDACTED].

Furthermore, based solely on the information submitted, we concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Finally, based solely on the information submitted, we concur in the conclusion reached by the Board that [REDACTED] is not an employer under Acts as it was not under common control with a railroad employer and it did not perform services in connection with the transportation of passengers or property by railroad.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

JUN 26 1990

Attention: CC:IND:1:3

Dear Sir:

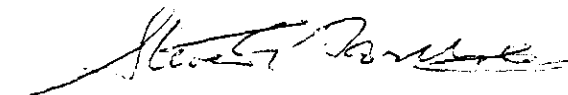
In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:

[REDACTED]

[REDACTED]

[REDACTED]

Sincerely yours,



Steven A. Bartholow
Deputy General Counsel

UNITED STATES GOVERNMENT

Memorandum

JUN 08 1990

TO : Director of Research and Employment Accounts

FROM : Deputy General Counsel

SUBJECT: [REDACTED]

Employer Status

This is in response to your Forms G-215 of January 19, 1989, January 31, 1989, and February 6, 1989, requesting my opinion regarding the employer status of the above-captioned companies.

[REDACTED] has been an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts since [REDACTED] (See Legal Opinion L-[REDACTED]). Neither [REDACTED] nor the present [REDACTED] have been held to be employers under the Acts.

According to Legal Opinion L-[REDACTED] a company called [REDACTED] (hereinafter "[REDACTED]") which had been held to be an employer under the Acts since [REDACTED] (BA No. [REDACTED]), transferred some of its operations and all of its employees to [REDACTED]. The remaining portion of [REDACTED] was renamed [REDACTED]. Legal Opinion L-[REDACTED] found that [REDACTED] had ceased to be an employer as of [REDACTED], and that [REDACTED] became an employer as of [REDACTED] (BA No. [REDACTED]).

On [REDACTED], [REDACTED] transferred all of its stock to the [REDACTED] (hereinafter "[REDACTED]"), a corporation formerly named [REDACTED], and one of the companies presently under review. According to a letter dated [REDACTED] from [REDACTED] of the [REDACTED] [REDACTED] had no employees when its stock was transferred to [REDACTED]. According to [REDACTED] was not dissolved as a result of the transfer, nor was it merged into [REDACTED]; rather, it became a subsidiary of [REDACTED]. The directors and/or officers of [REDACTED] are directors and/or officers of [REDACTED] and [REDACTED].

1/ [REDACTED] is a holding company; [REDACTED] is the wholly-owned railroad subsidiary of the holding company, and has been an employer under the Acts since [REDACTED] (BA No. [REDACTED]).

Director of Research and Employment Accounts

According to a letter dated [REDACTED], from [REDACTED], [REDACTED] for [REDACTED] at the time of the transfer [REDACTED] "was merely a corporation established for the purpose of holding real estate that was not encumbered by the Railroad Mortgages. Generally these properties were considered development properties." [REDACTED], like [REDACTED], stated that "[REDACTED] did not have any employees at the time of the stock transfer, no employees were transferred to [REDACTED] and [REDACTED] does not have any employees now."^{2/}

As you know, the definition of an employer contained in section 1(a) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) reads in part as follows:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

In view of the information provided by [REDACTED] and [REDACTED], it is my opinion that while [REDACTED] is under common control with an employer (i.e. it shares officers and/or directors with [REDACTED], a covered employer) it is merely a real estate holding company and it does not perform any service in connection with the transportation of passengers or property by railroad. According, [REDACTED] ceased to be an employer under the Acts effective [REDACTED], the date its stock was transferred to [REDACTED].

In a letter dated [REDACTED] [REDACTED] described [REDACTED] as follows:

^{2/} It is noted that officers of a corporation are considered employees of that entity.

Director of Research and Employment Accounts

"We are the and management and development subsidiary of [REDACTED], a publicly-traded, diversified holding company, which is owned in part by [REDACTED]. We focus our attention on maximizing return on non-operating real properties owned by [REDACTED] and our affiliates for the purpose of developing such properties for their highest and best use. We engage in commercial, office, retail, and single and multi-family residential development projects, either independently or with joint venture development partners. We also manage properties under lease, including over [REDACTED] acres of grazing land and farmland. As a land developer and manager, we do not engage in transportation or handling of property or persons by railroad."

From the information provided by [REDACTED], it is clear that [REDACTED] is not under common control with a covered employer. Furthermore, the service provided by [REDACTED] is not service in connection with the transportation of passengers or property by rail. Accordingly, it is my opinion that [REDACTED] is not an employer within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts.

Prior to [REDACTED], [REDACTED] was known as [REDACTED]. [REDACTED] was incorporated in Delaware on [REDACTED], and the Articles of Incorporation for [REDACTED] state that the purpose of the corporation is to "engage in all the activities of a real estate developer." According to [REDACTED]'s letter of [REDACTED], [REDACTED] was a subsidiary of [REDACTED], the holding company. On [REDACTED], a Certificate of Amendment of its Certificate of Incorporation was filed with the Secretary of State of Delaware, changing [REDACTED]'s name to [REDACTED]. Prior to the name change, [REDACTED] had approximately [REDACTED] employees, and [REDACTED] employees became employees of [REDACTED]. Prior to [REDACTED],

"[REDACTED] managed selected real estate assets not used for railroad operations. It's [sic] objective was to realize a higher financial return from those assets through predevelopment activities, joint venture agreements, and property sales. [REDACTED] did not engage in any service relating to the railroad transportation of passengers or property".^{3/}

^{3/} It is noted that [REDACTED], [REDACTED], an annuitant receiving retirement benefits under the Act, alleges that he should be credited with railroad service and

Director of Research and Employment Accounts

In view of the information provided by [REDACTED], it is my opinion that prior to becoming [REDACTED], [REDACTED] was not an employer under the Acts, as it was not under common control with a railroad employer and even if it were, just as it would later perform as [REDACTED], [REDACTED] performed no services in connection with the transportation of passengers or property by railroad.

Appropriate Forms G-215 giving effect to the foregoing are attached.


Steven A. Bartholow

Attachments

3/ (continued)

compensation for services performed for [REDACTED] from [REDACTED] to [REDACTED]. While [REDACTED] has provided copies of numerous magazine and newspaper articles, alleged transcripts of telephone conversations and affidavits of various people stating that [REDACTED] performed "railroad work", none of [REDACTED]'s allegations are verified by any of the companies involved.